

1. Petit Misdemeanor sentencing Guidelines.

The following matrices and guidelines are developed and maintained to assist practitioners and judges in formulating fair, effective sentences. These guidelines are intended to give structure and general parameters to the general categories of a misdemeanor sentence. There are some specific recommendations that apply across the board to all petit misdemeanors. There are some practices and guidelines that are only applicable to certain types of offenses and those are outlined in those sections.

There is a DUI matrix; a general/traffic matrix, a matrix for Drug and ETOH (other than DUI); and a Domestic Violence Matrix. These are all provided with an eye to using the best practices available for any given type of offense. As best practices develop and change over time, the Sentencing Commission will revisit and adjust these guidelines and matrices.

Fines and other financial consequences:

The Sentencing Commission recommends the court impose the recommended fine for the most serious offense convicted. If the court believes further financial sanctions are required for multiple offenses, the Commission recommends at most 10% of the standard fine for each subsequent charge. This reflects two factors. First the uniform fine schedule is silent as to whether fines should be cumulative; and second, defendants who appear at arraignment are more likely to suffer a hardship than those who seek to negotiate at a pre-trial disposition.

Where the only term of a sentence is a fine, probation is inappropriate. Sufficient avenues exist to collect criminal accounts receivable (OSDC). Threat of jail should not be used to coerce collection of a criminal accounts receivable. Further, new offenses will be sanctioned by the court handling those charges. The Sentencing Commission recommends that the Legislature remove criminal accounts receivable from probation terms under 77-18-1, with the exception of court ordered restitution.

As a general rule, the Sentencing Commission recommends that misdemeanor courts faced with sentencing a defendant who is already being supervised by another court for a more serious offense (whether that be recently sentenced, or an earlier grant of probation) consider allowing that grant of probation to provide the programming, or other corrective interventions needed by a defendant.

2. DUI Matrix

3. General Offense/ Traffic Matrix

The Sentencing Commission recommends that the Legislature recodify all simple traffic (and boating) offenses in Title 41, Chapter 6a and Title 73 Chapter xx, (and local ordinances regulating similar conduct) that are listed as class c misdemeanors, as infractions. These are strict liability regulatory offenses and should not carry jail consequences. Other direct and collateral consequences (points accumulation, license suspension) available in this highly regulated area and a financial consequence, are sufficient consequences. Should the legislature choose to retain some offenses as Class C Misdemeanors, those should be tailored to reflect direct threats to

public safety ie Careless Driving; Speeding in a school zone, or 30+; causing death or serious bodily injury as a result of some improper operation of a motor vehicle.

The Sentencing Commission recommends that the Legislature remove traffic infractions from the definition of “criminal activity” for purposes of restitution, codifying the rule of State v. Robinson (CITE)

	Criminal Traffic ¹	Traffic & Infractions	General Class C	General class B	Person class B
Fine ²	Fine Schedule	Fine schedule	Fine schedule	Fine schedule	Fine Schedule
Other Conseq	As appropriate ³	None	*Low: None Med: Ass High Ass	*Low: None Med: Ass High Ass	*Low: None Med: Ass High Ass
Jail	0-30 ⁴	None	none	*Low none med 0-30 high 0-60	*Low none med 0-60 high 0-180
Probation ⁵		None	None ⁶	*low none 0-12 months	*Low none 0-12 months

4. Drug and ETOH (other than DUI) Matrix.

The sentencing of these offenses should be driven by considerations of risk and needs, both criminogenic and substance abuse related. Great care should be taken to ensure that low risk offenders are not exposed to high risk offenders, or required to undergo treatment at the discretion of any entity other than the court. Screening and assessment are encouraged, but the final decision to order treatment after such assessment, remains with the court if an objection is raised by a defendant. Treatment modalities should reflect best practices and be geared toward reducing risk or addressing needs.

¹ Moving violations such as reckless driving, leaving the scene, careless driving, racing, etc.

² See general note regarding financial consequences.

³ Defensive driving; Recommend License suspension; Refer for Fitness

* Offender Risk Level as determined using a 4th generation risk tool. The use of these screenings, is largely why this matrix does not expressly account for prior offenses, because the existence or lack of those priors will be reflected in a defendant's risk level. For first time offenders where the court cannot or will not get a risk assessment before sentencing, default to low for property and order offenses, and medium for crimes involving threats or injury to persons.

⁴ A jail sanction should only be used for the most egregious violations. Sentencing Commission recommends no more than 3 days where behavior modification is the goal of sentencing.

⁵ Where the only term of a sentence is a fine, probation is inappropriate. Sufficient avenues exist to collect criminal accounts receivable (OSDC). Threat of jail should not be used to coerce collection of a criminal accounts receivable. Further, new offenses will be sanctioned in the court handling those charges.

⁶ Unless there is court ordered restitution to a victim to monitor.

	Alcohol in Public	MIP ¹	Intox ²	POCS/PODP Marijuana	POCS other	PODP other
Fine ³	Fine schedule	Fine schedule	Fine schedule	Fine Schedule	Fine schedule	Fine schedule
Treatment	None	*Low: None Med: S/A High S/A	*Low: S/A Med: S/A High S/A	*Low: None Med: S/A High S/A	*Low: None Med: S/A High S/A	*Low: Screen Med: S/A High S/A
Jail ⁴	None	*Low: None Med: None High 0-30	*Low: None Med: None High 0-30	*Low: None Med: None High 0-30	*Low: None Med: None High 0-30	*Low: None Med: 0-30 High 0-60
Probation ⁵	None	*Low: None Med: Court High Super	*Low: None Med: Court High Super	*Low: None Med: Court High Super	*Low: None Med: Court High Super	*Low: None Med: Super High Super

5. Domestic Violence Guidelines

Sentencing in DV cases present many challenges. These guidelines are intended to provide a broad framework to structure a sentence. They have been developed with the maximum deference to judicial discretion to weigh the competing factors in these cases. Victim safety must be the primary factor. However, the reality of continued contact between continued partners must be taken into account as well. With respect to treatment/counseling, the recommended delineations take into account the realities of the limited availability of treatment modalities in cases not involving intimate partners.

¹ without other charges, such as intox, or interfering.

² or MIP with charges described in footnote 1.

³ See general guidelines regarding financial consequences

* Offender Risk Level as described in General Offense Matrix. However, in the context of these offenses, a substance abuse screening with a determination of low/med/high needs for treatment, may also be appropriate. For offenders with no criminal history, where the court cannot or will not get an assessment before sentencing, default to low.

⁴ Ranged jail sanctions described in this matrix refelect the belief that no more than the maximum descried is needed throughout the length of probation to maintain compliance.

⁵ Where the only term of a sentence is a fine, probation is inappropriate. Sufficient avenues exist to collect criminal accounts receivable (OSDC). Threat of jail should not be used to coerce collection of a criminal accounts receivable. Further, new offenses will be sanctioned in the court handling those charges.

The matrix distinguishes crimes that involve assaults/wrongful detention, and imminent threats, from crimes involving cohabitants, but directed more at property or trespass related offenses (labeled “Other ‘DV’ Offenses”).

As with all the misdemeanor sentencing guidelines, these guidelines take into consideration the offender’s risk level as determined by a score generated by a fourth generation screening tool, such as the LS/RNR. Remember this risk factor is generalized to a defendants’ risk of reoffending coupled with their needs for particular interventions to reduce that risk. They are not a measure of risk (danger/threat) and should never be confused with a lethality assessment or other tool designed to measure potential harm to an identifiable person such as an intimate partner.

These tools are best at weeding out low risk offenders from medium and high-risk offenders. Offenders who score in medium or high or in the margins in between those category should, if possible, receive further assessment as part of any supervised or court ordered probation to determine the appropriate level of treatment/interventions.

Generally, the Commission recommends that misdemeanor courts faced with sentencing a defendant who is already being supervised for a more serious offense (whether that be recently sentenced, or an earlier grant of probation) consider allowing that grant of probation to provide the programming. However, given the specific safety concerns for identifiable victim(s) in DV cases, the Commission recognizes the appropriateness of probation terms tailored by each court to maximize victim safety.

The DV sentencing matrix does not include a category for fines. However, the Sentencing Commission recommends that the court impose the fine appropriate for the most serious offense for which the defendant is convicted. If there are multiple counts, and the court believes a more serious financial penalty is appropriate, the Commission recommends the court impose at most 10% of the recommended fines for each additional count. The Commission does not recommend the imposition of any suspended amount of fine, as violations should be addressed with behavior based sanctions, not financial ones. The Commission certainly does encourage courts to allow defendants credits or offsets against ordered fines for completed counseling and other achieved goals (UA’s, etc.).

		ORL ¹	DV Person Crimes, generally involving actual violence or attempts	“Other” DV, generally involving property
Intimate partners (include those with children in common and current visitation) ⁱⁱ	Treatment counseling ⁱⁱⁱ	Low Med high	DV Assessment DV Assessment DV Assessment	None DV Assessment or CBT DV Assessment or

				CBT
	Jail ^{iv}	Low Med High	0-30 0-60 0-90	None 0-30 0-60
	Probation type ^v	Low Med High	None Court Supervised	None Court Supervised
Other Cohabitant Relationships (roommates, adult siblings/cousins)	Treatment	Low	None	None
	Counseling	Med High	DV Assessment or CBT DV Assessment or CBT	DV Assessment or CBT DV Assessment or CBT
	Jail	Low Med High	0-10 0-30 0-60	None 0-30 0-60
	Probation Type	Low Med High	None Court Court	None Court Court

ⁱ Offender Risk Level

ⁱⁱ The protection of victim in these situations is of prime importance. Lethality assessments are recommended if available. Consider recommendations for sentencing protective orders, but recognize that protective orders issued by civil courts are broader and offer permanent protections

ⁱⁱⁱ Courts should recognize the statutory presumption for counseling in DV cases *See* UCA 77-36-5, recognizing that current modalities of DV treatment are directed primarily at intimate partners. As more differentiated treatments become readily available, these recommendations will be updated. This table does not account for the fact that a defendant may well present with other treatment/counseling needs such as substance abuse. A court faced with that should, if practicable address those issues through appropriate screening and assessment.

^{iv} In DV cases, victim safety is the primary factor at sentencing. These ranges are meant as the general amount of jail time that the Commission believes are needed suspended to help a defendant achieve the terms outlined as a condition of sentence. They are not aimed at determining what an appropriate amount of jail at

the time of sentencing would ensure the safety of a particular victim. Nor do they seek to address what period of incarceration is the amount warranted for a particular attack or infringement inflicted on the victim. Courts must weigh those factors in each case, balancing the core principles of sentencing as outlined in the guidelines.

⁂ The Commission recognizes that not all courts will have access to supervised probation. Again, a court may well be able to leverage an already existing supervision by another court, with appropriate updates.